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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 JIM WEBBER; an individual and TOM GRINER, an individual;)

9 v. Plaintiffs)
)

10 CLARK COUNTY, NEVADA; BRUCE L. WOODBURY,)
11 TOM COLLINS, CHIP MAXFIELD, YVONNE ATKINSON) **Verified Complaint**
GATES, MYRNA WILLIAMS, LYNETTE BOGGS)
12 MCDONALD, RORY REID, COMMISSIONERS.)

13 Defendants.)
14

15 Come now the Plaintiffs, by and through the undersigned attorneys, and file this Complaint
16 for declaratory relief stating that Clark County Code Chapter 16.11, and sections 16.11.020,
17 16.11.035, 16.11.040, 16.11.090, and 16.11.100, violate, both facially and as applied by the
18 Defendants: freedom of speech, free exercise of religion, equal protection and due process clauses
19 of the United States Constitution and Article 1, Section 9 of the Nevada Constitution. In addition,
20 Plaintiffs request injunctive relief to enjoin Defendants from enforcing these provisions, and to also
21 enjoin Defendants from imposing any further penalties on Plaintiffs regarding the aforementioned
22 code sections. Plaintiffs also seek appropriate damages.

23 **I. Introduction**

24 1. Plaintiffs bring this action for declaratory, injunctive, and monetary relief pursuant
25 to 28 USC §2201 and 42 USC § 1983, requesting that this Honorable Court declare Clark County
26 Code Chapter 16.11, and sections 16.11.020, 16.11.035, 16.11.040, 16.11.090, and 16.11.100
27 ("Clark County obstruction ordinances") in violation of the First and Fourteenth Amendments to
the U.S. Constitution, and Article 1, Section 9 of the Nevada Constitution, and that it enjoin their
enforcement by the Defendants.

has jurisdiction pursuant to 28 USC §1331.

3. Venue is proper in the District of Nevada pursuant to 28 USC §1391.

4. Because the Defendants are not an arm of the state, this suit is not barred by the
5 Eleventh Amendment to the U.S. Constitution,. *See, Eason v. Clark County School District*, 303
6 F.3d 1137, 1145 (9th Cir. 2002); *See also Culinary Workers Union v. Del Papa*, 200 F.3d 614, 619
7 (9th Cir. 1999).

8 **II. Procedural history**

9 5. Plaintiff Tom Griner was arrested twice, once on or about April 14, 2004, and again
10 on or about May 21, 2005, for violating Clark County ordinance 16.11.090, a penal provision for
11 "obstructive use" of a public sidewalk as defined in Clark County chapter 16.11.020(e)(3). On the
12 first occasion, the prosecutor dropped all charges before the arraignment. On the second occasion,
13 charges were suspended against plaintiff Tom Griner at the arraignment hearing of August 17, 2005,
14 but his professionally hand-crafted sign was not returned to him.

15 6. Plaintiff Jim Webber was also arrested on May 21, 2005 for violating Clark County
16 ordinance 16.11.090, a penal provision for "obstructive use" of a public sidewalk as defined in Clark
17 County chapter 16.11.020(e)(3). The charges against him were also dropped at the arraignment
18 hearing of August 17, 2005, but his professionally hand-crafted Christian sign was not returned to
19 him.

20 **III. Parties**

21 7. Plaintiff Jim Webber is a street preacher and resident of Las Vegas, Nevada.

22 8. Plaintiff Tom Griner is a pastor, street preacher and resident of Reno, Nevada.

23 9. Defendant Clark County Commission is a political entity authorized as a service
24 delivery organization for governance of Clark County, Nevada.

25 10. Defendants Woodbury, Collins, Maxfield, Gates, Williams, McDonald, and Reid
26 are the Commissioners for the Clark County Commission.

27 **IV. Facts**

28 11. 16.11.035 (County policy against obstructive uses of public sidewalks) states the

2 "It is the policy of Clark County that no obstructive use, other than a permitted obstructive
3 use, shall be permitted upon any public sidewalk of the resort district of the Las Vegas Valley
4 if the obstructive use, if allowed to occur, would:

5 (a) Cause the LOS for the sidewalk to decline below LOS C; or
6
7 (b) Result in a significant threat to or degradation of the safety of pedestrians."

8 12. Clark County Code 16.11.040 (Prohibition of obstructive uses) states the following:

9 "No obstructive use shall be permitted on public sidewalks in the following areas,

10 which areas shall be designated by the placement of pavement markings on the public
11 sidewalks or signs designating the limits of the no obstruction zones, or plaques, monuments
12 or medallions placed in the public sidewalks:

13 (a) On or within any crosswalk, including but not limited to all portions of a public sidewalk
14 located in or on a median, traffic island or other structure within, across or over or under a
15 public street or roadway;

16 (b) (1) In or within one hundred fifty feet of any mid-block crosswalk, as measured from the
17 crosswalk parallel to the sidewalk curb toward the direction of approaching vehicular traffic,
18 and

19 (2) In or within fifty feet of any mid-block crosswalk as measured from the crosswalk
20 parallel to the sidewalk curb away from the direction of approaching vehicular traffic;

21 (c) (1) In or within one hundred feet of any crosswalk located at an intersection of streets or
22 highways, as measured parallel to the sidewalk curb in the direction of approaching vehicular
23 traffic from the point of curvature of the curb or the marked edge of the crosswalk,
24 whichever is less, and

25 (2) In or within fifty feet of a crosswalk located at an intersection of streets or highways, as
26 measured parallel to the sidewalk curb away from the direction of approaching vehicular

4 (d) In or within fifty feet of any driveway providing ingress into or egress from any private
5 or non-public property, as measured parallel to the sidewalk curb outward from the point of
6 the curb cut;

7 (e) On or within any section of the public sidewalk which has been determined to have an
8 average LOS of C or below, during the hours at which LOS declines below LOS C, as
9 determined by a traffic study conducted by a registered professional engineer or the Clark
10 County department of public works according to the methodology set forth in the Las Vegas
11 Boulevard South Pedestrian Walkway Study."

12 1. Clark County Code 16.11.020(e) - (g) (General definitions) define "obstructive use"
13 and Permitted obstructive use" as follows:

14 "e) "Obstructive use" means:

15 (1) Placing, erecting or maintaining an unpermitted table, chair, booth or other structure upon
16 the public sidewalk;

17 (2) Forming a cordon or line of persons across the public sidewalk;

18 (3) Carrying banners or signs which protrude beyond the person's front or rear or which
19 exceed the person's body width, upon the public sidewalk;

20 (4) Placing or storing equipment, materials, parcels, containers, packages, bundles or other
21 property upon the public sidewalk;

22 (5) Placing, erecting or maintaining an unpermitted fixed or semi-fixed sign upon the public
23 sidewalk;

24 (6) Sleeping upon the public sidewalk;

25 (7) Obstructing, delaying, hindering, blocking, hampering or interfering with pedestrian
26 passage, including passage to or from private property; or

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2
3 below LOS C, as determined by the methodology used in Chapter 13 of the Highway
4 Capacity Manual and Las Vegas Boulevard South Pedestrian Walkway Study.
5
6

7 (f) "LOS C" means a pedestrian flow on a sidewalk of less than or equal to ten pedestrians
8 per minute per foot as specified and defined in the Highway Capacity Manual, Special Report
9 209, a copy of which is filed with the office of the county clerk.
10
11

12 (g) "Permitted obstructive use" means:
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14

15 (1) Any obstructive use of the public sidewalk by public safety equipment, including but not
16 limited to, street signs, traffic signals, fire hydrants, utility poles and street and sidewalk
17 lighting; and
18

19 (2) Any obstructive use of the public sidewalk for purposes of construction, maintenance or
20 repair of the public safety equipment, right-of-way (or equipment therein) or adjoining
21 private property, conducted by or pursuant to a valid construction permit issued by the Clark
22 County department of public works, Clark County building department or Nevada
23 Department of Transportation;
24

25 (3) Any obstructive use of the public sidewalk resulting from:
26
27

28 (A) An encroachment or structure constructed pursuant to the ordinances, rules, regulations
or laws of the United States, the state of Nevada or Clark County, or
29
30

(B) The construction, modification, addition or alteration upon abutting private property
31 occurring or in place before May 1, 1994;
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33

(4) Any newsrack licensed pursuant to Clark County Code Chapter 16.08 unless such
34 newsrack causes a degradation of the LOS to LOS C or less as provided in Section
35 16.11.040(e);
36
37

(5) Any conduct "arguably protected" by the National Labor Relations Act until or unless
38 such conduct is determined to be unprotected pursuant to a decision of the National Labor
39
40

2 (h) "Arguably protected" as used in subsection (g)(5) of this section has the same meaning
3 as in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 79 S. Ct. 773 (1959)."

4 1. Clark County Code 16.11.090 (Penalty for violation) reads as follows:

5 "Any person who violates any of the provisions of this chapter is guilty of a misdemeanor
6 and upon conviction shall be punished by imprisonment in the county jail for a term not to
7 exceed six months or by a fine not to exceed one thousand dollars, or by both such fine and
8 imprisonment."

9 15. On or about Wednesday, April 14, 2004, officers of the Las Vegas Metropolitan
10 Police

11 ("LVMPD") approached Plaintiff Tom Griner on the sidewalk in front of the Bellagio hotel and
12 casino and told him that he was in violation of Clark County code for obstruction of the sidewalk
13 for carrying signs that were wider than his body. There was very little foot traffic, and Plaintiff
14 Griner explained that he had chosen the spot for street preaching due to its 20-foot wide sidewalks.
15 He also believed he had a right to be witnessing at that place, due to a recent Ninth Circuit Court of
16 Appeals ruling. Plaintiff Griner's signs were attached to rods and held aloft above his head. After
17 discussion, the officers said they would return the next night with a copy of the ordinance, and
18 Plaintiff Griner agreed to meet them.

19 16. The following night Plaintiff Griner was again carrying Christian banners
20 and handing out Christian literature to passers-by in front of the Bellagio with his friend Bob
21 Robertson. The two LVMPD officers returned and showed Plaintiff Griner a copy of the obstruction
22 ordinance stating that no sign could be wider than the presenter's body. When Plaintiff Griner again
23 pointed out that there was virtually no pedestrian traffic and that his signs were above the flow of
24 traffic, the LVMPD officers replied that actual obstruction was irrelevant, and insisted that Plaintiff
25 Griner was obstructing the sidewalk. Plaintiff Griner was issued a citation for violating the Clark
26 County obstruction ordinances. Bob Robertson video taped the incident.

27 17. Plaintiff Griner informed his friend and colleague Plaintiff Jim Webber about the

1 incident. As a result of the citation issued to Plaintiff Griner, Plaintiff Webber suggested that they
2 alter their signs to be narrower than their bodies while witnessing on the Strip. After making new
3 banners, 24" inches by 65" inches, to conform to the Clark County code, Plaintiffs continued to
4 witness in front of the Bellagio until Plaintiffs court date. When Plaintiff Griner attended his
5 hearing, he was informed that the prosecutor had dropped the charges against him, at least for the
6 time being.

7 18. Plaintiffs believed that the charges against Plaintiff had been dropped because the
8 prosecutor had realized that the ordinance was unconstitutional, in violation of Plaintiffs'
9 constitutional rights. Plaintiffs thus resumed witnessing with their original large banners - 41"
10 inches by 44" inches.

11 19. Plaintiffs, bearing their larger signs, were witnessing in front of the Venetian hotel
12 and casino in late summer of 2004. Local security guards told them to leave, and when Plaintiffs
13 refused, called LVMPD. The officers and security guards told Plaintiffs that they could not witness
14 on that property, as it was private. Plaintiffs again mentioned the Ninth Circuit case decided to the
15 contrary, and called officials at the American Civil Liberties Union of Nevada ("ACLU of Nevada"),
16 who arrived at the scene. After discussion between the ACLU of Nevada officials and LVMPD, the
17 police and guards allowed Plaintiffs to continue witnessing on public property. LVMPD officers
18 made no mention of sign width; they only mistakenly told Plaintiffs they could not be standing on
19 the public sidewalk in front of the Venetian. This further strengthened Plaintiffs' belief that their
20 larger signs were lawful. This encounter was also video tape.

21 20. Plaintiffs witnessed through the spring of 2005 without further incident. On May 21,
22 2005, Plaintiffs were witnessing in front of the Bellagio, as was their custom due to the wide
23 sidewalks. Two LVMPD officers approached them and told them to move to the edge of the
24 sidewalk. Plaintiffs inquired if he knew about the Ninth Circuit ruling in their favor, stated that he
25 had a right to proclaim his religion, and began to videotape the encounter. This irritated the police.
26 Plaintiff Webber encouraged the officers to call their supervisor, which one of them did. That officer
27 got off the phone and abruptly came over to the Plaintiffs without any further communication and
28 grabbed their banners out of their hands, and threw them on the ground. LVMPD handcuffed both

1 Plaintiffs and called for a paddy wagon while writing out citations against both Plaintiffs. About six
2 LVMPD officers measured the signs and Plaintiffs' bodies, confiscated the banners, and placed
3 Plaintiffs into a LVMPD paddy wagon. This encounter was also video taped by Plaintiff Jim
4 Webber, as well as a film crew from the television series "COPS."

5 21. Plaintiffs were taken to the Clark County Detention Center, where they were booked
6 and held in cells until 4 a.m., and released into the jail's back alley.

7 22. Plaintiffs resorted again to the smaller signs. On August 17, 2005, Plaintiffs
8 attended the hearing for their citations, and were informed the charges had not been filed by the
9 District Attorney's office. Believing the ordinance under which they were cited to be
10 unconstitutional, and again recognized as such by the prosecutor, plaintiffs began again using their
11 larger signs, except two that had been confiscated by LVMPD during the May 2005 incident.

12 **IV. Standing**

13 23. Plaintiffs have standing in that plaintiffs have already been arrested for violating
14 Clark County code. Plaintiff Tom Griner has been arrested twice. The Las Vegas Metropolitan
15 Police are currently enforcing obstruction ordinances. Plaintiffs Griner and Webber have twice
16 altered their signs used on public sidewalks as a result of police enforcement, fearful of further police
17 action. Two of their professional-grade Christian signs remain in police custody. As Plaintiffs
18 intend to continue to engage in their religious speech including the use of signs wider than their
19 bodies, the possibility for Plaintiffs to be arrested, charged, and jailed still remains. Thus, the
20 requirements for Article III standing have been met.

21 **V. Causes of action**

22 **Violations of the United States Constitution**
Clark County Code Chapter 16.11

23 **First Cause of Action**
(Clark County Code Chapter 16.11)

24 **Violation of the right of freedom of speech guaranteed**
by the First and Fourteenth Amendments
to the United States Constitution

26 24. Plaintiffs reallege and incorporate by reference herein the allegations set forth above.

27 25. Clark County Code Chapter 16.11 violates the right to freedom of speech guaranteed
28 by the First and Fourteenth Amendments to the United States Constitution, both facially and as

Second Cause of Action

(Clark County Code Chapter 16.11)

Violation of the right of free exercise of religion guaranteed by the First and Fourteenth Amendments to the United States Constitution

26. Plaintiffs reallege and incorporate by reference herein the allegations set forth above.

27. Clark County Code Chapter 16.11 violates the right to free exercise of religion

7 guaranteed by the First and Fourteenth Amendments to the United States Constitution, both facially
8 and as applied by Defendants.

Third Cause of Action

(Clark County Code Chapter 16.11)

Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

28. Plaintiffs reallege and incorporate by reference herein the allegations set forth above.

29. Clark County Code Chapter 16.11 violates the equal protection clause of the

¹⁴ Fourteenth Amendment to the United States Constitution, both facially and as applied by Defendants.

Fourth Cause of Action

(Clark County Code Chapter 16.11)

Violation of the right to due process of guaranteed by the to the United States Constitution.

30. Plaintiffs reallege and incorporate by reference herein the allegations set forth above.

31. Clark County Code Chapter 16.11 violates the due process clauses of the Fifth and

Fourteenth Amendment to the United States Constitution, both facially and as applied by the Defendants.

Fifth Cause of Action

Fifth Cause of Action (Clark County Code Chapter 16.11)

Vagueness and overbreadth

32. Plaintiffs reallege and incorporate by reference herein the allegations set forth above.

33. Clark County Code Chapter 16.11 is unconstitutionally vague and overbroad.

Sixth Cause of Action

(Clark County Code Chapter 16.11)

Clark County Code Chapter 16.1 Violation of Article 1, Section 9 of the Nevada Constitution

4 **Seventh Cause of Action**
5 **(Clark County Code Chapter 16.11)**
6 **Violation of state law**

7 36. Plaintiffs reallege and incorporate by reference herein the allegations set forth above.
8 37. Clark County Code Chapter 16.11 violates NRS 194.010.

9 **Eighth Cause of Action**
10 **(Clark County Code Chapter 16.11)**
11 **Violation of state law**

12 38. Plaintiffs reallege and incorporate by reference herein the allegations set forth above.
13 39. Clark County Code Chapter 16.11 violates NRS 614.160.

14 **Ninth Cause of Action**
15 **(Clark County Code Chapter 16.11)**
16 **Violation of state law**

17 40. Plaintiffs reallege and incorporate by reference herein the allegations set forth above.
18 41. Clark County Code Chapter 16.11 violates NRS 651.070.

19 **Eighth cause of action**
20 **Intentional infliction of emotional distress**

21 42. Plaintiffs reallege and incorporate by reference herein the allegations set forth above.
22 43. Defendants' actions have caused Plaintiffs to suffer significant emotional harm.

23 **Ninth cause of action**
24 **conversion**

25 44. Plaintiffs reallege and incorporate by reference herein the allegations set forth above.
26 45. Defendants took Plaintiffs' signs during the - 2005 arrest and have not, without
justification, returned the property to the rightful owners.

27 **WHEREFORE**, Plaintiffs' request this Honorable Court for the following:
28

a. a declaration that Clark County Code Chapter 16.11, and sections 16.11.020,
16.11.035, 16.11.040, 16.11.090, and 16.11.100 violate, both facially and as applied by the
Defendants, the free speech clause of the First Amendment to the United States Constitution;
b. a declaration that Clark County Code Chapter 16.11, and sections 16.11.020,
16.11.035, 16.11.040, 16.11.090, and 16.11.100 violate, both facially and as applied by the

2 Constitution;

3 c. a declaration that Clark County Code Chapter 16.11, and sections 16.11.020,
4 16.11.035, 16.11.040, 16.11.090, and 16.11.100 violate, both facially and as applied by the
5 Defendants, the equal protection clause of the Fourteenth Amendment to the United States
6 Constitution;

7 d. a declaration that Clark County Code Chapter 16.11, and sections 16.11.020,
8 16.11.035, 16.11.040, 16.11.090, and 16.11.100 violate, both facially and as applied by the
9 Defendants, the right to due process of law guaranteed by Fifth and Fourteenth Amendments to the
10 United States Constitution;

11 e. a declaration that Clark County Code Chapter 16.11, and sections 16.11.020,
12 16.11.035, 16.11.040, 16.11.090, and 16.11.100 violate, both facially and as applied by the
13 Defendants, Article 1, Section 9 of the Nevada Constitution;

14 f. a declaration that Clark County Code Chapter 16.11, and sections 16.11.020,
15 16.11.035, 16.11.040, 16.11.090, and 16.11.100 are unconstitutionally vague and overbroad;

16 g. a declaration that Clark County Code Chapter 16.11, and sections 16.11.020,
17 16.11.035, 16.11.040, 16.11.090, and 16.11.100 violate NRS 194.010, both facially and as applied
18 by the Defendants;

19 h. a declaration that Clark County Code Chapter 16.11, and sections 16.11.020,
20 16.11.035, 16.11.040, 16.11.090, and 16.11.100 violate NRS 614.160, both facially and as applied
21 by the Defendants;

22 I. a declaration that Clark County Code Chapter 16.11, and sections 16.11.020,
23 16.11.035, 16.11.040, 16.11.090, and 16.11.100 violate NRS 651.070, both facially and as applied
24 by the Defendants;

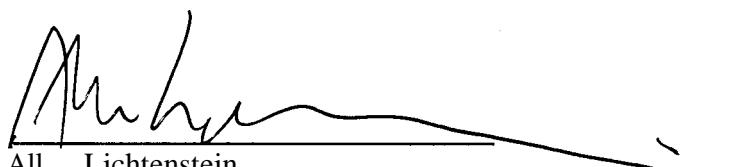
25 j. an injunction prohibiting enforcement of Clark County Code Chapter 16.11.

26 k. an injunction to prohibit the Defendants from imposing any criminal penalties against
27 plaintiffs.

28 l. an order mandating return of Plaintiffs' confiscated signs,

5 Dated this 14th day of February 2006:

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10 Respectfully submitted by:
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alichtensteinlaw@aol.com

21 Attorney for Plaintiffs
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Verification

19 Jim Webber pursuant to 28 U.S.C. § 1746, hereby makes the following declaration: (1) he
20 is a Plaintiff in the above titled action, (2) he has read the above February 14, 2006 Complaint and
21 knows the contents thereof, and (3) the same is true of his own knowledge except for those matters
22 therein stated on information and belief.

23 Dated this 14th day of February 2006



24
25
26
27 Webber
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1 Subscribed and sworn before me, a notary public in Clark County, Nevada, this 14th day of February,
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2 2006.

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N TARP P
STATE OF NEVADA
County of Clark
ALLEN LICHTENSTEIN
Appt. No. 98-2
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